

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

Taxpayer

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IBT # XXXXX

William J. Hogan
Administrative Law Judge

APPEARANCES: None

SYNOPSIS: This matter comes on for hearing pursuant to the Taxpayer's timely protest of Notice of Tax Liability XXXXX issued by the Department of Revenue on May 4, 1993, for Use Tax on the purchase of a 1980 Bobco Trailer. At issue is the question whether the purchase of the vehicle qualifies for the "rolling stock" exemption as provided under the terms of 35 ILCS 120/3-60. Following submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

3. The Rolling Stock affidavit exempting the subject trailer from sales tax was filed with the Taxpayer's sales tax transaction return. It indicated that the subject trailer was to be used under a one year or

longer lease with XXXXX (hereinafter "XXXXX"), under XXXXX Illinois Commerce Commission Certificate of Authority No. 78658MC. (See Department Exhibit #5, ST-556; Rolling Stock Affidavit.)

4. On May 16, 1990, the Taxpayer and XXXXX commenced an oral lease agreement under XXXXX Certificate of Authority. (See Taxpayer's testimony at Trans. p. 17, and Taxpayer's exhibit #5, Taxpayer's affidavit of lease with XXXXX.)

5. The Taxpayer failed to provide documentary evidence that XXXXX had an active number authorizing interstate commerce hauling.

6. The Taxpayer proffered as Exhibit No. 1 its own Illinois Commerce Commission No. authorizing intrastate commerce hauling, effective July, 1992; two years subsequent to the purchase at the subject trailer.

7. No documentary evidence sufficient to prove that the subject trailer was utilizing a certificate of authority for interstate commerce hauling, as is required under the Illinois tax acts, has been proffered into the record.

CONCLUSIONS OF LAW: The Illinois Retailers' Occupation Tax Act provides an exemption for sales of tangible personal property to interstate carriers for hire use as rolling stock moving in interstate commerce, or lessors under leases for one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. (See 35 ILCS 120/3-60).

The Illinois Administrative Regulation promulgated under the Act provides in pertinent part:

"c) The rolling stock exemption cannot be claimed by a purely intrastate carrier for hire as to any tangible personal property which it purchases because it does not meet the statutory tests of being an interstate carrier for hire.

d) The exemption applies to vehicles used by an interstate carrier for hire, even just between points in Illinois, in transporting, for hire, persons whose journeys or property whose shipments, originate or terminate outside Illinois on other

carriers. The exemption cannot be claimed for an interstate carrier's use of vehicles solely between points in Illinois where the journeys of the passengers or the shipments of property neither originate nor terminate outside Illinois.

e) When the rolling stock exemption may properly be claimed, the purchaser should give the seller a certification that the purchaser in an interstate carrier for hire, and that the purchaser is purchasing the property for use as rolling stock moving in interstate commerce. If the purchaser is a carrier, the purchaser must include its Interstate Commerce Commission Certificate of Authority number or must certify that it is a type of interstate carrier for hire (such as an interstate carrier of agricultural commodities for hire) that is not required by law to have an Interstate Commerce Commission Certificate of Authority. In the latter event, the carrier must include its Illinois Commerce Commission Certificate of Authority number indicating that it is recognized by the Illinois Commerce Commission as an interstate carrier for hire. If the carrier is a type which is subject to regulation by some Federal Government regulatory agency other than the Interstate Commerce Commission, the carrier must include its registration number from such other Federal Government regulatory agency in the certification claiming the benefit of the rolling stock exemption. If the purchaser is a long term lessor (under a lease of one year or more in duration), the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire. The giving of such a certification does not preclude the Department from going behind it and disregarding it if, in examining such purchaser's records or activities, the Department finds that the certification was not true as to some fact of facts which show that the purchase was taxable and should not have been certified as being tax exempt. The Department reserves the right to require a copy of the carrier's Interstate Commerce Commission or other Federal Government regulatory agency Certificate of Authority or Illinois Commerce Commission Certificate of Authority (or as much of the certificate as the Department deems adequate to verify the fact that the carrier is an interstate carrier for hire) to be provided whenever the Department deems that to be necessary. (86 Ill. Adm. Code 130.340)"

On examination of the record established, this Taxpayer has failed to demonstrate by presentation of testimony or through exhibits or arguments that the vehicle assessed was leased to an interstate carrier. With this statutory criterion lacking, the Taxpayer has failed to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given above, the determination that XXXXX is subject to tax on its purchase of a trailer stands as a matter of law.

RECOMMENDATION: It is my recommendation that Notice of Tax Liability
No. XXXXX be finalized and this matter is closed.

William J. Hogan
Administrative Law Judge